In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1486

ATLAS ENGINE WORKS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

This case presents the same basic question as that involved in *National Labor Relations Board* v. *American Cable Systems, Inc.*, No. 737, this Term, certiorari denied, 400 U.S. 957, and in *American Art Industries, Inc.* v. *National Labor Relations Board*, No. 995, this Term, certiorari denied, February 22, 1971. The issue is whether the Board may properly disregard the effect of post-election employee turnover in determining whether an employer's pre-election unfair labor practices preclude the holding of a fair representation election and warrant a bargaining order. In *American Cable*, one panel of the Fifth Circuit answered this question negatively (427 F. 2d 446); in

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American Art, another panel of that Court answered it affirmatively (415 F. 2d 1223), as did the Sixth Circuit here. See also *G.P.D., Inc.* v. *National Labor Relations Board,* 430 F. 2d 963 (C.A. 6), No. 1169, this Term, certiorari denied, March 22, 1971; *National Labor Relations Board* v. *Stanley Air Tools,* 432 F. 2d 358 (C.A. 6), No. 1403, this Term, pending on petition for a writ of certiorari.

The Board believes that the court of appeals correctly decided this case. See *National Labor Relations Board* v. *Gissel Packing Co.,* 395 U.S. 575, 610–611. Although the Board agrees with petitioner that the decision below conflicts with that of the Fifth Circuit in *American Cable,* that conflict was brought to the Court's attention in *American Cable* (see petition for the National Labor Relations Board, No. 737, this Term, pp. 9, 13). Presumably, the same considerations which led the Court to deny the petition in *American Cable* and the subsequent petitions in *American Art* and *G.P.D.* would also prompt it to deny the petition here. See also *National Labor Relations Board* v. *Clark's Gamble Corp.,* 422 F. 2d 845 (C.A. 6), No. 265, this Term, certiorari denied, 400 U.S. 868.

Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1971.

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